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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION This Document Relates Solely To: *Al-Haramain Islamic Foundation, Inc., et al. v. Bush, et al.* (C07-CV-0109-VRW)	MDL Docket No. 06-1791 VRW **DECLARATION OF STEVEN GOLDBERG IN SUPPORT OF PLAINTIFFS' MOTION TO EXTEND TIME FOR SERVICE PURSUANT TO F. R. CIV. P. 4(m)** ***Al-Haramain Islamic Foundation, Inc., et al., v. Bush, et al.***

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I, Steven Goldberg, am one of the attorneys for Plaintiffs in this action. I have personal knowledge of the matters attested to in this Declaration, and I am legally competent to testify to the matters stated herein. I make this Declaration in Support of Plaintiffs' Motion to Extend Time for Service as required by N.D. Cal. Civil L.R. 6-3(a).

Reasons for the Requested Extension of Time

When this lawsuit was filed, Plaintiffs' intent was to sue Defendants in their official and individual capacities. Although the Complaint did not explicitly say this, the statute under which Plaintiffs filed their claim for damages, 50 U.S.C. § 1810, creates a cause of action against a "person" who violates the Foreign Intelligence Surveillance Act (FISA), which defines a person as including individuals. *See* 50 U.S.C. § 1801(m). All of the individuals named as Defendants are thus subject to a damage claim under FISA as individuals as well as in their official capacities.

Service was made on the United States Attorney General on March 8, 2006. (Docket No. 16). However, Plaintiffs inadvertently failed to personally serve each of the individually named Defendants as, within weeks of the filing of the Complaint, this case became focused on the classified document that Plaintiffs filed under seal with the Complaint. There were numerous telephone conferences with Judge Garr King (to whom the case was initially assigned) regarding the nature of the document, where it should be kept, and whether Plaintiffs should have access to it. Plaintiffs never received notice that personal service had not been accomplished. Defendants did not mention the incomplete service until they filed their Reply Brief in the Ninth Circuit Court of Appeals. *See* Reply Brief For Appellants at 17.

Efforts Made to Obtain a Stipulation to the Time Extension

On April 14, 2008, I personally conferred with Tony Coppolino, the lead Department of Justice attorney working on this case, who was in Portland. I gave him copies of the motion that I proposed filing and we discussed the possibility of the government stipulating to the proposed extension of time. I received an email on April 16th from Mr. Coppolino advising that the "Government will not consent to your requested stipulation and will oppose your motion."

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Harm or Prejudice That Would Occur if the Court Does Not Extend Time

Pursuant to F. R. Civ. P. 4(m), Plaintiffs seek to extend the time period to serve, individually, Defendants Bush, Alexander, Werner and Mueller. If Defendants prevail on their sovereign immunity argument regarding this lawsuit as an action against the United States, and if Defendants prevail on their argument that there is no basis for declaratory or injunctive relief, failure to grant this motion may result in this lawsuit – and the critical issues it raises regarding separation of powers – never being resolved in the courts. Plaintiffs, and indeed the Nation, will suffer "substantial harm and prejudice." N.D. Cal. Civil L.R. 6-3(a)(3).

Previous Time Modifications in This Case

There have been no prior time modifications in this case, whether by stipulation or court order, related to service.

Effect on Case Schedule

The requested time modification will have no effect on the schedule for this case.

DATED this 17th day of April, 2008.

/s/ Steven Goldberg
STEVEN GOLDBERG, Ore. Bar No. 75134